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Order 97-4-16

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Order 97-4-16



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 16th day of April, 1997

INTERNATIONAL AIR TRANSPORT ASSOCIATION:

AGREEMENT RELATING TO
LIABILITY LIMITATIONS OF THE
WARSAW CONVENTION

Docket OST-95-232

ORDER APPROVING TARIFF PROVISION

By Order 97-1-2, January 8, 1997, the Department issued an Order on Reconsideration in this proceeding authorizing the filing of tariffs for immediate effectiveness, if conforming precisely to the language included in specified provisions of the "The Agreement on Measures to Implement the IATA Inter-carrier Agreement" (MIA).¹ As a result of that Order, carriers parties to the MIA were entitled to file, for immediate effectiveness, tariffs implementing the MIA provisions which waived the Warsaw liability limits (Art. 22(1)) in their entirety, and waived the carrier defense of proof of non-negligence in Article 20(1) up to 100,000 SDRs, and optionally the provision in paragraph II. 1. of the Agreement whereby the carrier submitted to the law of the domicile or permanent residence of the passenger. The Department also expressed its intent to permit MIA Agreement carriers to adopt the option in paragraph II. 3. of the MIA, subject to the condition that that provision would not apply to U.S. Social Agencies. Paragraph II. 3. of the MIA, reads as follows:

¹ Order 97-1-2 reconsidered the Department's Order 96-11-6, to permit the filing of tariffs for the MIA. Order 96-11-6 made final, *pendente lite*, portions of the Department's Order to Show Cause, 96-10-7.

"3. Neither the waiver of limits nor the waiver of defences shall be applicable in respect of claims made by public social insurance or similar bodies however asserted. Such claims shall be subject to the limit in Article 22(1) and to the defences under Article 20(1) of the Convention. The carrier will compensate the passenger or his dependents for recoverable compensatory damages in excess of payments received from any public social insurance or similar body."

With the exception of the waiver of the limit, application of strict liability up to 100,000 SDRs, and submission to the law of the domicile of the passenger, Order 97-1-2 directed that options under the MIA might be implemented only by filing conditions of carriage in this docket, and specified that no such options should become effective for transportation to and from the United States, unless specifically authorized by order of the Department (ordering paragraph 4). We noted that in the context of such consideration the Department would "also be in a position to determine if any portion of such provisions might more appropriately be included in tariffs, but only to the extent, and in language approved by, the Department" (Order 97-1-2, note 16, p. 8).

By letter dated April 15, 1997, British Airways has filed in this Docket a proposed tariff provision for implementation of the optional Paragraph II. 3. of the MIA (waivers not to apply to Social Agencies), but with the exclusion of such inapplicability of the waivers for U.S. Social Agencies, as required by condition (b) in ordering paragraph 2 of Order 97-1-2. British Airways requests that we approve the proposed language for implementation of option II. 3. of the MIA (but not for U.S. Social Agencies), and permit that provision to be included in the tariff filed by British Airways for implementation of the MIA Agreement provisions, as authorized by Order 97-1-2, to be filed as a tariff for immediate effectiveness.

The proposed condition and tariff provision reads as follows:

"Neither the waiver of limits nor the waiver of defenses shall be applicable in respect of claims made by public social insurance or similar bodies (except with respect to any such bodies of the United States) however asserted. Such claims shall be subject to the limit in article 22(1) and to the defenses under Article 20(1) of the Convention."

British Airways notes that the proposed provision is taken verbatim from paragraph II. 3. of the MIA, with the exception of (1) the exception for such bodies of the United States, and (2) the exclusion of the last sentence of the MIA provision (paragraph II. 3.). With respect to the latter, British Airways represents that the exclusion of the last sentence is intended only for simplification and would not in any way "alter British Airways' obligation as a signatory under the MIA or applicable law." It appears that the last sentence is in fact redundant and might cause confusion, and that there is no substantive difference between the provision proposed and paragraph II. 3. of the MIA, other than the exclusion of U.S. social bodies.

We are satisfied that the proposed language for implementation of the optional paragraph II. 3. of the MIA is consistent with that provision as anticipated by Order 97-1-2, and appropriately excludes U.S. Social Agencies and similar bodies, as required by the condition in ordering paragraph 2(b) of Order 97-1-2. We also find that, as conditioned, the proposed tariff provision would not be inconsistent with the public interest, and may be included in the carrier's tariff, in the language proposed. We further find that tariff provisions, in identical language and meaning may be filed by any other carriers in tariffs for implementation of the MIA Agreement provision, for immediate effectiveness.

ACCORDINGLY:

1. British Airways, and any other carrier filing tariffs conforming to the requirements of Order 97-1-2 for implementation of the MIA Agreement, may include in their tariffs, for immediate effectiveness, a provision reading as follows:

"Neither the waiver of limits nor the waiver of defenses shall be applicable in respect of claims made by public social insurance or similar bodies (except with respect to any such bodies of the United States) however asserted. Such claims shall be subject to the limit in article 22(1) and to defenses under Article 20(1) of the Convention."

2. Except as provided in paragraph 1, all provisions of Order 97-1-2 shall apply with respect to tariffs implementing the MIA or other Agreements.

3. This order may be amended or revoked, at any time, as the Department may find is required by the public interest.

By:

PATRICK V. MURPHY
Deputy Assistant Secretary for
Aviation and International Affairs

(SEAL)

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